IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2565 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE BANK OF SAURASHTRA

Versus

A.D. PATEL

Appearance:

1. Special Civil Application No. 2565 of 1986

MR AS VAKIL for Petitioner No. 1

MS REETA CHANDARANA GOVERNMENT PLEADER for Respondent No. 1,4

MR BT BUCH for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner State Bank of Saurashtra has challenged the order dated

8.4.1986 passed by the Authority under the Payment of Wages Act and Civil Judge (Senior Division), Porbandar, below Exh.9 in Payment of Wages Application No. 7 of 1984. By the said order dated 8.4.1986, the petitioner was directed to pay a sum of Rs. 11,50,000/- plus Rs. 36,140.41 to the labourers including one Shri J.K. Raval, as earned leave benefits from period of March, 1983. It was further provided that the said amount should be adjusted by the petitioner Bank towards future amounts received by the Bank. It was directed that the said amount should be paid to Maharani Mill where the workers were employed, latest by 28.4.1986 and the Mill should disburse the amount to the labourers towards earned leave benefits from March, 1983 and pay the same by 30.4.1986.

2. While admitting this petition, this Court had granted interim relief staying the operation of the impugned order on the condition that 50% of the amount so directed shall be deposited by the petitioner.

3. The learned Counsel for the petitioner has assailed the impugned order on the ground that the petitioner was not responsible for making the payment since the petitioner is neither the employer, nor the person responsible for payment of wages as required under sub-section (3) of Section 15 of the Payment of Wages Act, 1972 (hereinafter referred to as "the said Act"). The petitioner therefore, submits that the order of the Authority is passed without jurisdiction.

4. Section 15 of the said Act provides that the State Government may, by notification in official gazette, appoint a Presiding Officer of any Labour Court or Industrial Tribunal or any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of wages of persons employed or paid in that area. Sub-section (2) of Section 15 of the said Act provides that where contrary to the provisions of the Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself or any other person specified therein may apply to the authority under sub-section (1) of Section 15 for direction under sub-section (3) of Section 15. Sub-section (3) of Section 15 provides that when any application under Section 2 is entertained, the Authority shall hear the applicant and the employer or other persons responsible for the payment of wages under

Section 3, or give them an opportunity of being heard, and, after such further enquiry, as may be necessary, may, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty five rupees.

Section 3 of the said Act provides for responsibility for payment of wages and it reads as follows:-

"3. Responsibility for payment of wages. --

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed (otherwise than by a contractor)--

(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948),

(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment;

(c) upon railways (otherwise than in factories) if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall also be responsible for such payment."

Term "employer" has also been defined under sub-section (ia) of Section 2 of the said Act and is meant to include the legal representative of a deceased employer.

5. On the basis of the said statutory provisions the learned Counsel for the petitioner points out that the petitioner could not have been categorised as the employer or any other person responsible for the payment of wages. He submits that admittedly the petitioner Bank was not the employer of the concerned workmen, nor the petitioner Bank was any of the persons specified in Section 3 of the said Act so as to be categorised as other person responsible for the payment of wages under Section 3 of the Act. He submits that in the past, if the petitioner Bank had as a special case given consent for payment of certain amounts in the interest of workers, the authority under Payment of Wages Act should not have utilised the concession of the petitioner given in the past to insist that the petitioner must pay further amounts without having regard to the statutory provisions.

6. Having heard the appearing Counsel and having perused the material on record, I am inclined to accept the contention of the learned Counsel for the petitioner. There is nothing on record to suggest that the petitioner was either the employer or other person responsible for payment of wages under Section 3 as required under sub-section (3) of Section 15 of the said Act, so as to enable the authority under the Payment of Wages Act, to pass the impugned order. Admittedly, the workers concerned were employed by Maharana Mills. The petitioner therefore was obviously not the employer. The petitioner is also not falling under any of the sub-sections of Section 3 of the said Act, since the petitioner was only the bankers of the Maharana Mills and had no role to play in the manufacturing activity or in the employment of the labourers. In my view therefore, the order of the authority under the Payment of Wages Act is passed in total disregard to the statutory provisions and the authority lacked the jurisdiction to pass the said order. In that view of the matter, the impugned order dated 8.4.1986 passed by the authority under the Payment of Wages Act below EX.9 in PWA No.7/84 is required to be quashed and set aside and the same is accordingly, set aside.

7. The Counsel for the petitioner is unable to state with certainty as to the status of the amount deposited by the petitioner pursuant to interim orders dated 5.5.1986 passed by this Court. It is provided that if the amount is not already disbursed in favour of the workmen, the petitioner will be entitled to full consequential benefits of this order by which the impugned order is quashed and set aside.

8. In the result, the petition is allowed. Rule made absolute with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas